



Arizona State Senate Issue Paper

October 24, 2006

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

ARIZONA ADOPTION

ADOPTION CERTIFICATION

Any adult resident of Arizona is eligible to qualify to adopt children, regardless of marital status, and a husband and wife may jointly adopt children. Before a prospective adoptive parent (parent) may petition to adopt, the parent must be certified by the court as acceptable to adopt children. To become certified, the parent must submit a written application for adoption certification to the court, the Department of Economic Security (DES) or a private adoption agency.

Neither DES nor a private adoption agency is required to accept every application for adoption certification. In considering which certification applications to accept, DES may give priority to applications filed by persons wishing to adopt a child with special needs. Special needs children include children age six or older; sibling groups; children with physical, mental or developmental disability or a high risk of a disability; children with emotional disturbance; and children with a high risk of severe emotional disturbance if removed from the care of their foster parents.

After an application for adoption certification is accepted, the court, DES or private adoption agency investigates the parents to determine if they are fit and proper persons to adopt. The investigation considers the applicant's financial condition, physical and mental health, social history, moral fitness, religious background, a Child Protective Services (CPS) central registry check, a state and federal criminal records check, and any other factors relevant to the fitness of the applicant. Applicants are required to have a valid fingerprint clearance card and must sign a notarized certification that they have never been convicted of any criminal offense that would preclude them from obtaining a fingerprint clearance card. Once the investigation is complete, the entity that completed it gives the court a written report and recommends to the court whether the parents should be certified.

Based on the report, the court certifies the parent as acceptable or nonacceptable to adopt. A person who is nonacceptable may not reapply for certification for one year. Certification is valid for 18 months and may be extended for additional 12-month periods if

the court reviews the person's circumstances and finds no significant changes

For applicants who have adopted another child within the previous three years or who are licensed foster parents in Arizona, the entity performing the investigation provides only an update report on any changes in circumstances since the previous certification or licensure report. Unless there are changes in circumstances that adversely affect the applicant's parenting ability, the court is required to certify these applicants as acceptable to adopt.

Adoption certification is not required if the prospective adoptive parent is: 1) the spouse of the birth or legal parent; 2) the child's aunt, uncle, adult sibling, grandparent or great-grandparent; or 3) the spouse of a deceased birth or legal parent or other relative if the child resided primarily with the deceased person and the prospective adoptive parent during the 24 months prior to the person's death.

DES maintains a central adoption registry of all prospective adoptive parents currently certified by the court, except those who request that their names not be included. The registry also includes the names of all foster children who are currently available to adopt, as well as other children available to adopt whose information is voluntarily provided by a person who has the right to consent to the child's adoption.

HOW A CHILD BECOMES LEGALLY AVAILABLE TO ADOPT

A child is legally available to adopt if: 1) the child's parents voluntarily consent to adoption; 2) the parents have waived legal rights to the child; 3) the parental rights of the child's parents have been terminated with respect to the child; or 4) any combination of these circumstances, such as when a birth mother voluntarily consents to adoption and any potential fathers waive their legal rights to the child.

When parents voluntarily consent to adoption, signed and witnessed written consent must be filed with the court from the child's birth or adoptive mother, and from the child's

father if: 1) the father was married to the mother at the time of conception or any time between conception and birth; 2) the father has adopted the child; 3) the father's paternity is established through paternity proceedings with DES, including through voluntary acknowledgement or genetic testing.

A person claiming paternity who wants to receive notice of any adoption proceedings may file notice of a claim of paternity and of his willingness and intent to support the child to the best of his ability with the state registrar of vital statistics in the Department of Health Services (DHS). The notice must include his name, address and signature in addition to the name and last known address of the birth mother and either the birth date of the child or the probable month and year of the expected birth of the child. Notice may be filed prior to the child's birth and must be filed within 30 days after. A person who has filed the notice is referred to as the child's putative father. DHS maintains a confidential registry of putative fathers, which can be searched upon request from the court, DES, a licensed adoption agency or a licensed attorney assisting with an adoption.

When a child is placed for adoption by the mother, she must file with the court a notarized affidavit listing all potential fathers. Notice is served on each potential father and any putative father informing him that adoption is planned, that he has a right to consent or withhold consent to the adoption and that he has a responsibility to initiate paternity proceedings with DES. A potential father's failure to file a paternity action with DES within 30 days after receipt of the notice and to pursue the action to judgment bars him from bringing or maintaining any action to assert any interest in the child, and his consent to adoption is not needed.

It is not necessary to obtain consent to adoption from a parent whose parental rights have been terminated by the court. Any person or agency with a legitimate interest in the welfare of a child, including prospective adoptive parents, DES or an adoption agency, may file a petition for termination of parental rights (TPR) with the juvenile court. Grounds for TPR include: abuse or neglect;

abandonment; inability to discharge parental responsibilities due to mental illness or chronic substance abuse; conviction of a felony proving the unfitness of that parent to have custody of a child; proof that the parent has had parental rights to another child terminated within the past two years for the same cause; or demonstration that the child has been in out-of-home placement for longer than nine months and the parent neglected or refused to remedy the problems. After a TPR petition is filed, the court gives a copy of the petition and notice of the initial TPR hearing to the parents or legal guardian of the child. The notice informs the parent or guardian of the right to appear as a party in the TPR proceeding. If a parent does not appear at the initial TPR hearing, the court may find that the parent has waived legal rights, which is also grounds to terminate that parent's parental rights. The court must also consider the best interests of the child when considering grounds for TPR. A parent whose rights are terminated may appeal the decision; a child is not legally free to adopt until all appeal rights have been satisfied, which often takes a year or longer.

THE LEGAL PROCESS FOR ADOPTION

Petition to Adopt and Adoption Hearing Timeframes

Once a child is legally free to adopt and the prospective adoptive parent is certified as acceptable to adopt children, a petition to adopt may be filed with the superior court by the prospective adoptive parent, an adoption agency or DES. After a petition is filed, the clerk of the superior court sets a time and place for an adoption hearing. The hearing must take place within six months after the petition is filed, unless the court postpones the hearing for good cause. In certain cases, the hearing must take place in a shorter timeframe. If the child has resided in the prospective adoptive home for at least one year preceding the petition filing, the hearing must be held within 60 days. If the child has resided in the prospective adoptive home for at least six months preceding the petition filing, or if the child is under six months of age, the hearing must be held within 90 days. Once the time and place of the hearing are set, notice is

served on the petitioner, the adoption agency (if any), any person required to consent to the adoption and any person who has initiated a paternity action with DES.

Social Study

At least ten days before the adoption hearing, DES, the adoption agency or an officer of the court must submit a social study on the adoption to the court. The social study must include: the social history and heritage of the child; the mental and physical condition of the child and the child's birth parents; the child's current placement in the prospective adoptive home and the child's adjustment to that home; the prospective adoptive parent's suitability to adopt; current custody and financial arrangements; and state and criminal records checks and a CPS central registry check of the prospective adoptive parent and any adult living in the prospective adoptive home. The study also contains a recommendation for or against the proposed adoption and the reasons for the recommendation.

If the prospective adoptive parent is the child's stepparent, adult sibling, aunt, uncle, grandparent or great-grandparent and the child has resided with the person for at least one year, the social study may consist only of the results of the criminal records checks and CPS central registry check. If the child has resided with the prospective adoptive parent for at least six months and the person has adopted a child within three years or is a licensed foster parent, the social study may consist of only the CPS central registry check and a review of any substantial changes in circumstances since the previous adoption or license renewal.

Adoption Hearing and Decree of Adoption

If, at the adoption hearing, the court finds, by a preponderance of the evidence, that all statutory requirements have been met and the adoption is in the best interests of the child, the court orders the adoption by decree of adoption. On entry of the decree of adoption, the relationship of the adopted parent and child is as though the child were born to the adoptive parent in lawful wedlock, with all the legal

rights, privileges, duties and obligations of such a relationship, including rights of inheritance.

Adoption decrees from other states have the same force and effect as decrees granted by an Arizona court.

Agreements Regarding Communication

The parties to an adoption may enter into an agreement regarding communication between the child being adopted, the adoptive parent(s) and the birth parent(s), which is enforceable if it is in writing and approved by the court. The court may only approve such an agreement if it finds that communication is in the child's best interests. Adoptions with approved communication agreements are commonly referred to as "open adoptions." All approved agreements must state that the adoptive parent may terminate contact between the birth parent and the adoptive child at any time if the adoptive parent believes it is not in the child's best interests. Failure to comply with a communication agreement is not grounds for setting aside a decree of adoption.

INTERNATIONAL ADOPTION

International adoptions are governed by the adoptive child's country of residence. DES licenses private adoption agencies that handle international adoptions if they are physically located in Arizona, but otherwise has no oversight of the international adoption process.

The DHS Office of Vital Records creates and registers Arizona certificates of foreign birth for adoptive children who were born in a foreign country, are not United States citizens, went through a completed adoption process in a foreign country prior to coming to the United States and have an IR-3 stamped passport. If an adoptive child does not have an IR-3 stamped passport, the adoption process must be completed again in Arizona for the child to obtain an Arizona certificate of foreign birth. Rules for obtaining an IR-3 visa and stamped passport are administered by the United States Department of State.

ADOPTION OF FOSTER CHILDREN

When the court determines that a foster child should not be reunited with his or her parents, DES recommends for court approval a change in the case plan goal to termination of the parent-child relationship and adoption of the child. At this point, DES determines the appropriate prospective adoptive placement for the foster child. DES currently prioritizes prospective adoptive homes in the following order: relatives, the foster family where the child has been residing and certified adoptive homes that meet the needs of the foster child.

DES manages the adoption process for foster children at the agency or through private adoption agencies contracted with DES to assist with the adoption of foster children. Most foster children meet the statutory definition of "special needs" children, meaning rules relating to certification applications through DES and adoption subsidies apply to these children.

ADOPTION SUBSIDIES

The Adoption Subsidy Program (Program) was established in 1975 for children who otherwise may not be adopted because of special needs or circumstances. Adoption subsidies are funded through a combination of federal funding and state General Fund appropriations. DES administers the Program. According to DES, the Program is intended to help foster children achieve permanency through adoption. Additionally, DES rules state that the adoption subsidy makes it possible for children to secure a permanent legal home with prospective adoptive parents who meet all adoption standards except the financial ability to support the child. DES rules also state that children who are in the legal custody of DES and a ward of the court, or children in the legal custody of a licensed child welfare agency in Arizona, are eligible for the subsidy. Children who are never in the legal custody of either DES or a private agency are not eligible for the subsidy.

Prospective adoptive parents apply for adoption subsidies through DES. Families

receiving a subsidy and DES must enter into a subsidy agreement before the final decree of adoption is issued. Adoption subsidies can take the form of a monthly payment to adoptive parents or payment for special services, including health care services for children who are not covered by private insurance or other public resources such as the Arizona Health Care Cost Containment System. The amount of the subsidy varies with the needs of the adopted child and the availability of other resources. Subsidy agreements are reviewed at least once per year to determine the need for continuing or adjusting the subsidy amount.

ADDITIONAL RESOURCES

- Department of Economic Security Division of Children, Youth and Families
www.azdes.gov/dcyf/adoption
- Adoption Statutes: Arizona Revised Statutes, Title 8, Chapter 1
- Adoption Rules: Arizona Administrative Code, Title 6, Chapter 5, Article 65
www.azsos.gov/public_services/Title_06/6-05.pdf
- Birth Certificate Statutes: Arizona Revised Statutes, Title 36, Chapter 3, Article 3
- Annual Appropriations Report, Joint Legislative Budget Committee
www.azleg.gov/jlbc.htm